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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: DISAPPEARANCES AND SUMMARY EXECUTIONS

Written statement*/ submitted by the Asian Legal Resource Centre,
a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

Enforced and Involuntary Disappearances in Sri Lanka

1. Sri Lanka's disappearance cases are an outstanding issue of gross human rights abuse. The Government of Sri Lanka has clearly ignored international efforts to address this concern. The time has come for the establishment of an international tribunal or similar body to press the matter.

2. The Working Group on Enforced or Involuntary Disappearances made the following recommendations to the Government of Sri Lanka in its 21 December 1999 report (E/CN.4/2000/64/Add.1):

   (a) The Government should establish an independent body with the task of investigating all cases of disappearance which occurred since 1995 and identifying the perpetrators;

   (b) The Government should speed up its efforts to bring the perpetrators of enforced disappearances, whether committed under the former or the present Government, to justice. The Attorney-General or another independent authority should be empowered to investigate and indict suspected perpetrators of enforced disappearances irrespective of the out-come of investigations by the police;

   (c) The act of enforced disappearance should be made an independent offence under the criminal law of Sri Lanka punishable by appropriate penalties as stipulated in article 4 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance;

   (d) The Prevention of Terrorism Act and the Emergency Regulations currently in force should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners;

   (e) Any person deprived of liberty should be held only in an officially recognized place of detention as stipulated in article 10 (1) of the Declaration. All unofficial places of detention, in particular those established by paramilitary organizations fighting alongside the Security Forces, such as PLOTE and TELO, should immediately be dissolved;

   (f) The Government should set up a central register of detainees as provided for in article 10 (3) of the Declaration. Since the Human Rights Commission needs to be informed immediately of every arrest and detention under the Prevention of Terrorism Act and the Emergency Regulations, such a central computerized register of detainees might be established at its headquarters. Such a solution would, however, require a substantial increase in the powers and resources of the Commission;

(g) All families of disappeared persons should receive the same amount of compensation. The differentiation between public civil servants and others seems discriminatory and should, therefore, be abolished. Compensation should not be made dependent on the confirmation as "proven" by a Commission of Inquiry. In addition to these compensations, the families of disappeared persons should be supported, according to their needs, by other means, such as low interest loan schemes or scholarships for the children;

(h) The procedure for issuing death certificates in cases of disappearances should be applied in an equal and non-discriminatory manner to all families;

(i) The prohibition of enforced disappearance should be included as a fundamental right in the Constitution of Sri Lanka to which the remedy of a direct human rights complaint to the Supreme Court under article 13 of the Constitution is applied irrespective of the fact whether the disappeared person is presumed to be alive or dead;

(j) The Government should instruct the special unit in REPPIA to respond to the cases submitted by the Working Group on a case-by-case basis, in order to enable the Working Group to solve the cases which were reportedly clarified.

3. To date, these recommendations have been completely ignored by the government. The Asian Legal Resource Centre considers that among them the most important recommendation is the first, that the government should establish an independent body to investigate all disappearances since 1995. Besides the huge numbers of disappearances in the late eighties, estimated by non-government organisations at around 60,000, the Sri Lankan National Human Rights Commission received 2130 new complaints of disappearances between April 1997 and March 1999 alone, out of which only 767 cases have been traced. Government-appointed commissions into disappearances have found that these crimes have been committed with full knowledge, planning and encouragement of the government. The excuse often given by the authorities, that they lack sufficient evidence to prosecute, is based on deliberate avoidance of criminal investigations into these cases. Their way to avoid prosecutions is to avoid investigations. The Asian Legal Resource Centre urges the Commission to pursue the first recommendation above all others, until it is implemented.

4. The Asian Legal Resource Centre has already called upon the Commission and international community to encourage the Government of Sri Lanka to establish an independent commission with foreign backing and participants, empowered to investigate and conduct trials on all disappearances (E/CN.4/2000/NGO/63, paragraphs 8 and 9). The Asian Legal Resource Centre has also orally called upon the Commission to facilitate the establishment of an international tribunal as the best alternative. The government's abject failure to adopt remedial measures, its role in the causing of these disappearances and the sheer volume of abuse amount in total to a

5. With a view to establishing an international tribunal or similar body, the Commission must first review the Government of Sri Lanka's performance on disappearances. The Asian Legal Resource Centre recommends a Special Rapporteur be appointed with a view to this end. Unless the Commission vigorously pursues remedies for disappearances in Sri Lanka through specific ongoing measures, the perpetrators of these crimes will enjoy impunity and continue to work in the nation's law enforcement agencies.